

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Number: **201144004**

Release Date: 11/4/2011

Index Numbers: 852.00-00, 9100.00-00

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Refer Reply To:

CC:FIP:B03 – PLR-104716-11

Date:

August 02, 2011

**LEGEND:**

Taxpayer =

State X =

Accounting Firm =

Year =

Taxable Year =

Date 1 =

Date 2 =

Date 3 =

Dear :

This responds to a letter dated January 18, 2011, on behalf of Taxpayer requesting an extension of time under § 301.9100-1 and § 301.9100-3 of the Procedure and Administration Regulations to make an election under § 852(b)(3)(C) of the Internal Revenue Code and § 1.852-11(f) of the Income Tax Regulations to defer all or a portion

of its post-October capital losses incurred during Taxable Year in computing its taxable income in accordance with the principles set forth in §§ 1.852-11(f)(2) through (4).

### **FACTS**

Taxpayer is a trust that was organized under the laws of State X during Year. On Date 1, Taxpayer registered with the Securities and Exchange Commission under the Investment Company Act of 1940, as amended, as a non-diversified, closed-end management investment company. On Date 2, Taxpayer began operations so as to qualify to make an election to be subject to tax as a regulated investment company ("RIC"). Taxpayer uses an accrual method of accounting, and its taxable year ends on Date 3.

Accounting Firm prepares Taxpayer's tax returns. Taxpayer was eligible to elect to defer all or a portion of its post-October capital losses incurred during Taxable Year in computing its taxable income in accordance with the principles set forth in §§ 1.852-11(f)(2) through (4). Accounting Firm, however, inadvertently included the entire amount of the net capital loss incurred during Taxable Year as a component of the taxable income reported on the Form 1120-RIC prepared for Taxpayer for Taxable Year. As a result, Taxpayer failed to make the election provided in § 1.852-11(f) to defer all or a portion of Taxpayer's post-October capital losses to the following taxable year.

Taxpayer also makes the following additional representations:

1. The request for relief was filed by Taxpayer before the failure to make the regulatory election was discovered by the Service.
2. Granting the relief requested will not result in Taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than Taxpayer would have had if the election had been timely made (taking into account the time value of money).
3. Taxpayer did not seek to alter a return position for which an accuracy-related penalty has been or could have been imposed under section 6662 of the Code at the time they requested relief and the new position requires or permits a regulatory election for which relief is requested.
4. Being fully informed of the required regulatory election and related tax consequences, Taxpayer did not choose to not file the election.

### **LAW AND ANALYSIS**

Section 852(b)(3)(C) of the Code as in effect for Taxable Year provides that the amount of a RIC's net capital gain for a taxable year (to which an election under § 4982(e)(4) does not apply) shall be determined without regard to any capital loss or net long-term capital loss attributable to transactions after October 31 of such taxable year (collectively, post-October capital losses) and any post-October capital losses are treated as arising on the first day of the next taxable year. This Code section further provides that to the extent provided in regulations promulgated under § 852(b)(3)(C) of the Code, the preceding sentence shall apply also for purposes of computing the RIC's taxable income.

Section 1.852-11(f)(1) of the Income Tax Regulations generally provides, in relevant part, that a RIC may elect, in accordance with the procedures set forth under § 1.852-11(i), to compute its taxable income for a taxable year without regard to part or all of any post-October capital loss for that year. Section 1.852-11(i) of the regulations provides that a RIC may make the election for a taxable year by completing its income tax return (including any necessary schedules) for that taxable year in accordance with the instructions for those items applicable to the election.

Section 301.9100-1(c) of the Procedure and Administration Regulations provides, in part, that the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election (defined in § 301.9100-1(b) as an election whose due date is prescribed by regulations or by a revenue ruling, a revenue procedure, a notice, or an announcement published in the Internal Revenue Bulletin), or a statutory election (but no more than 6 months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-3(a) through (c)(1)(i) set forth rules that the Internal Revenue Service generally will use to determine whether, under the facts and circumstances of each situation, the Commissioner will grant an extension of time for regulatory elections that do not meet the requirements of § 301.9100-2. Section 301.9100-3(b) provides that subject to paragraphs (b)(3)(i) through (iii) of § 301.9100-3, when a taxpayer applies for relief under this section before the failure to make the regulatory election is discovered by the Service, the taxpayer will be deemed to have acted reasonably and in good faith; and § 301.9100-3(c) provides that the interests of the government are prejudiced if granting relief would result in the taxpayer having a lower tax liability in the aggregate for all years to which the regulatory election applies than the taxpayer would have had if the election had been timely made (taking into account the time value of money.)

## **CONCLUSION**

Based on the information submitted and representations made, we conclude that Taxpayer has satisfied the requirements for granting a reasonable extension of time to make an election to defer all or a portion of the Taxpayer's post-October capital losses

incurred by Taxpayer in Taxable Year in computing Taxpayer's taxable income and net capital gain, in accordance with § 852(b)(3)(C) and § 1.852-11(f).

Accordingly, Taxpayer is given 60 days from the date of this letter to make this election.

This ruling is limited to the timeliness of Taxpayer's election described above. This ruling's application is limited to the facts, representations, Code sections, and regulations cited herein. No opinion is expressed with regard to whether Taxpayer qualifies as a RIC under subchapter M of the Code.

No opinion is expressed with regard to whether Taxpayer's tax liability is not lower in the aggregate for all years to which the election applies than such tax liability would have been if the election had been timely made (taking into account the time value of money). Upon audit of the federal income tax returns involved, the director's office will determine such tax liability for the years involved. If the director's office determines that such tax liability is lower, that office will determine the federal income tax effect.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

Alice M. Bennett  
Chief, Branch 3  
Office of Associate Chief Counsel  
(Financial Institutions & Products)

Enclosures:

Copy of this letter

Copy for section 6110 purposes

cc: